IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9963 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JINABHAI RAVJIBHAI WEGAD

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/11/2000

ORAL JUDGEMENT

1. Heard learned advocate Mr. M.M.Tirmizi for the petitioner, learned AGP Mr. S.T.Mehta for respondents no.1, 2 and 3 and Ms. P.J.Dawavala for respondent no.4.

2. The petitioner has challenged the detention order dated 9.6.2000 passed by respondent no.2 - District Magistrate, Bhavnagar in exercise of powers conferred under Section 3 (2) of the Prevention of Black Marketing and Maintainace of Supplies of Essential Commodities Act (hereinafter referred to as "the Act"). The petitioner was detained on 9.6.2000 and served with the grounds of detention which are produced on record at Annexure-B from running page-15 to running page-17.

3. The petitioner - Jinabhai Ravjibhai Wegad has been dealing in a fair price shop at village Dhandhani as he was holding licence issued by the Competent Authority to deal in with the essential commodities like wheat, rice and kerosine etc. That on 24.5.2000, the Civil Supply Authority inspected the fair price shop of the petitioner and the record maintained by him and on inquiry found several irregularities, not only in the maintenance of registers, but stock which was actually found did not tally with the stock shown on the registers and as such, the Detaining Authority concluded that petitioner has been indulging into illegal activities and making undue profit by dealing in essential commodities. That filing of complaint under Sections 3 and 7 of the Essential Commodities Act, 1955, not being sufficient action to prevent the petitioner from continuing his prejudicial activity, the Competent Authority deemed it just to detain the petitioner under Section 3 (2) of the Act and hence, impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds as set out in the petition. That on 25.9.2000, rule was issued and made returnable. The respondents no. 1 and 2 have filed affidavits in reply which are taken on record vide pages no. 47 to 51 and 42 and 46 respectively. The respondent no.4 has also filed affidavit in reply which is taken on record vide pages no. 52 to 54.

5. When the matter was taken up for hearing for final hearing, learned advocate for the petitioner has urged the contention that documents provided with the grounds of detention vide pages no. 53, 55, 63, 65, 67, 69, 81, 83 and 95, 97, 103 and 105 are so illegible, that the petitioner could not make out any sense out of the said documents which prevented the petitioner from making an effective representation which has affected his fundamental right under Article 22(5) of the Constitution and as such, the impugned order is bad in law.

6. On scrutiny of papers, it appears that pages 67, 95, 97, 103 and 105 of the compilation produced on record suggest that they are legible if carefully read. However, page-85 of the compilation is so illegible. That it could not be read so as to understand the facts stated therein. Similarly, pages 81 and 83 are also partly illegible. That though respondents no. 1 and 2 have stated on oath in their affidavit in reply that all pages supplied to the petitioner are legible. On scrutiny of papers in the opinion of Court part of the documents are illegible.

7. That in the matter of Pokharajbhai Sohanbhai Chandel Vs. District Magistrate, Surat and Others, reported in 1991 (2) GLR 753, the Division Bench of this Court has considered the similar question and has held that failure on the part of the Detaining Authority to supply legible copies of relevant documents to the detenu for making effective representation infringes detenu's right under Article 22 (5) of the Constitution. Following the said dictum in the instant case also, in the facts and circumstances apparent from the record, it has to be held that on account of supply of illegible documents constitutional mandate under Article 22 (5) of the Constitution in favour of the petitioner is violated and thereby, impugned order is bad in law.

As the petition is succeed on the above stated ground alone, it is not necessary to consider the other contentions raised in the petition.

8. As a result of which, the present petition is allowed. The impugned order at Annexure-A dated 9.6.2000 passed by the District Magistrate, Bhavnagar is hereby quashed and set. The detenu - Jinabhai Ravjibhai Wegad shall be released forthwith, if not required in any other case. Rule to that extent is made absolute. Direct service is permitted.

(A.K.Trivedi,J)

(vipul)